REMARKS

Upon entry of this Response, claims 3-5, 7, 8, 11-13, 15, 16, 19-22, and 24-26 remain pending in the present patent application. No amendments are made to the claims herein, where a copy of the claims in their current state is provided for convenience. Applicants request reconsideration of the pending claims in view of the following remarks.

In item 2 of the Office Action, claims 3-5, 7, 8, 11-13, 15, 16, 19-22, and 24-26 remain rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,260,999 issued to Wyman (hereafter "*Wyman*") and further in view of U.S. Patent 6,714,921 issued to Stefik et al. (hereafter "*Stefik*"). A prima facie case of obviousness is established only when the prior art teaches or suggests all of the elements of the claims. MPEP §2143.03, In re Rijckaert, 9 F.3d 1531, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). For the reasons that follow, Applicants assert that the cited combination of references fail to show or suggest each of the elements of the above-listed claims. Accordingly, Applicants request that the rejection of these claims be withdrawn.

To begin, representative claim 3 provides as follows:

      3.   A method for maintaining a license repository, comprising:

      maintaining a number of entities in the license repository in a server by maintaining a profile for each of the entities, the number entities including a number of licensors and a number of licensees, each of the profiles including point of contact for at least one of the entities in the license repository;

      generating a number of licenses between respective pairs of the licensees and the licensors based upon an input from at least one of the licensees and the licensors, respectively;

      maintaining the licenses in the license repository; and

      wherein the step of generating the number of licenses between respective pairs of the licensees and the licensors based upon the input from the at least one of the licensees and the licensors, further comprises:

      generating a first one of the licenses based upon a unilateral input by a first one of the entities;

      notifying a second one of the entities that is party to the first one of the licenses of the creation of the first one of the licenses, wherein the first one of the licenses is unconfirmed; and

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receiving a confirmation status input from the
second one of the entities indicating whether the first one of the
licenses is confirmed.

As set forth above, claim 3 provides for the step of "generating a first one of the licenses based upon a unilateral input by a first one of the entities". Also, claim 3 provides for "notifying a second one of the entities that is party to the first one of the licenses of the creation of the first one of the licenses, wherein the first one of the licenses is unconfirmed." Finally, claim 3 further states the step of "receiving a confirmation status input from the second one of the entities indicating whether the first one of the licenses is confirmed." Applicants assert that at least these elements are not shown or suggested by *Wyman*. Applicants have repeatedly argued in previous responses to this effect and the Examiner has maintained the rejection nonetheless. Applicants assert that at this point that the rejection is based upon a misread of the teachings of *Wyman* and the following discussion will proceed to further illustrate this point.

Applicants assert that *Wyman* discusses the management of licenses that have already been created by negotiations of two parties. In this respect, Applicants have cited the express language of *Wyman* at column 11, lines 7-10 which states that "the license document generator program 26 under control of the user (a person), generates a license (usually the result of negotiation between a user of a program 26 and a user of a server 10)." Applicants have asserted that the above language indicates that the licenses created by a third party negotiation, presumably oral negotiations, and then is provided to the maintenance system as described in *Wyman* for maintenance during operation of a license.

In response to these assertions, in the "Response to Arguments" section of the Office Action, the Examiner states:

"The Applicant argues that the reference Wyman is in direct contrast to the limitations recited in Claims 3, 11, and 19. The Applicant substantiates that argument by citing "In operation of the distributed system of FIG. 1, the producer 28 gives the issuer 25 authority to grant licenses on its behalf (the producer and issuer can be a single entity or multiple entities). The license document generator program 26, under control of a user (a person), generates a

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license (**usually the result of negotiation between the user of program 26 and a user of the server 10).**

The Applicant then goes on to incorrectly quote Wyman by stating, "As stated above, the generation of the license is the results of a negotiation between the user of a program 26 and the user of the server 10." It would appear that the Applicant has eliminated the modifier "usually" and is treating the statement as an absolute action of the results always being by negotiations between the users. The Examiner submits that Wyman does not teach away from generating a license based upon the unilateral input of a licensee or teaches that the only way to obtain a license is through negotiations. A reference is to be considered not only for what it expressly states, but also for what it would reasonably have suggested to one of ordinary skill in the art. *In re DeLisle, 160 USPQ 806 (CCPA 1969).* The Examiner further submits that unilateral input is required in Wyman when requesting the use of a license. Wyman discloses, the license server maintaining a database of product use authorizations for the licensed products, and accesses this database for updating and when a request is received from a user." (Office Action, pages 2-3.)

In this respect, the Examiner asserts that the Applicants have eliminated the modifer "usually" and treated specific statements absolutely action. In this respect, the Examiner quotes *In re DeLisle* as standing for proposition "that a reference is to be considered not only for what is expressly states, but also for what it would have reasonably have suggested to one of ordinary skill art".

The fact is that other portions of *Wyman* support Applicants assertions. In particular, at column 7, lines 49-56, *Wyman* states;

"The license management facility *cannot create a license itself*, but instead must *receive a license document* (a product use authorization) from an *issuer of licenses*. As part of the overall license management system of the invention, *a license document generator is provided which creates the product use authorizations under authority of the owner of the software, as negotiated with customers*." (Emphasis added).

As set forth in the express discussion of *Wyman*, the license management facility cannot create a license itself, but receives license documents from an issuer of licenses. The overall license management system of the invention includes a license document generator that is provided which creates the product use authorizations under the authority of the owner of the software as negotiated with customers. Thus, licenses

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are ultimately created by an owner or operator of the license issuer portion of the system (see FIG. 1, item 25). These licenses are created based upon negotiations with users.

In addition, at column 10, lines 36-45, *Wyman* states:

> **"The license server 10 has no authority to originate a license, but instead must receive a license from a license issuer 25.** The issuer 25 is again a CPU executing a license document generator program 26 under an operating system 27. The *license issuer 25 may be under control of the producer 28 of the programs or software products being licensed, or may be controlled by a distributor who has received the authority to grant licenses from the producer or owner 28.* (Emphasis added)

As shown, the license server does not have the authority to originate a license but receives completed licenses from the license issuer 25. The license issuer 25 is operated by an individual or owner of the software program to be licensed as expressly described above. This owner (or distributor) generates the license pursuant to negotiations with customers as described above.

In addition, the Examiner has particularly stated the following:

> "The Examiner further submits that unilateral input is required in Wyman when requesting the use of a license. Wyman discloses, the license server maintaining a database of product use authorizations for licensed products, and accesses this database for updating when a request is received from the user." (Office Action, pages 2-3.)

Applicants respectfully disagree. In particular, claim 3 provides for the step of "**generating a first one of the licenses based** upon the unilateral input by a first one of the entities". In this respect, claim 3 describes a method in which the entire license is being generated by the unilateral input itself. The Examiner's statement that "Wyman discloses the license server maintaining a database of product use authorizations for the *licensed products*" admits the licenses are already in existence and product use authorizations issued pursuant to the license agreement are simply requested.

Applicants dispute that a "unilateral input" taught by *Wyman* in requesting the use of a license shows or suggests the concept of generating a license based upon unilateral input of one party. As contemplated in claim 3, the unilateral action causes the creation of the license which previously did not exist. In *Wyman*, the license has

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been created and the issuance of use authorizations are simply part of the functional operation and maintenance of the license after the time of creation. Applicants agree that a reference is to be considered not only for what it expressly states, but for what it would reasonably have suggested to one of ordinary skill in the art. In this respect, Applicants assert that *Wyman* does not show or suggest the concept of creating a license based upon a unilateral input by a given user as set forth in Claim 3. Rather, *Wyman* simply shows or suggests the concept of maintaining licenses after they have been created pursuant to negotiation with customers as expressly stated by Wyman. In this respect, *Wyman* teaches away from unilateral action by a user to create a license— they are negotiated between parties.

In addition, Applicants assert that *Wyman* fails to show or suggest the elements of "notifying a second one of the entities that is a party of the first one of the licenses of the creation of the first one of the licenses when the first one of the licenses is unconfirmed" and, "receiving a confirmation status input from the second one of the entities indicating whether the first one of the licenses is confirmed." The portions of *Wyman* cited by the Examiner simply do not show or suggest concepts relevant to the confirmation of a license that was created due to unilateral action as set forth in claim 3. Such is logically the case as why would a license need to be confirmed by a second party based upon unilateral action of a first party when licenses are created pursuant to negotiations of both parties?

In addition, Applicants wish to point out that delegatees 13 as described by *Wyman* (See column 9, lines 25-67) are not customers that negotiate or create licenses. Rather, delegatees are simply subsystems or servers upon which the license maintenance systems as described by *Wyman* are employed rather than putting such systems on main servers. In this sense, the delegatee servers 13 provide for license maintenance for large organizations with many client devices as described by *Wyman*.

In addition, to the extent that *Wyman* fails to show or suggest any elements as described above, Applicants assert that *Stefik* does not show or suggest any of these elements as well. Also, the Office Action does not rely upon *Stefik* as showing or suggesting such elements.

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Accordingly, for these reasons, Applicants once again request that the rejection of claim 3 be withdrawn. In addition, Applicants request that the rejection of claims 11 and 19 be withdrawn to the extent that they incorporate subject matter that is similar in scope with that of claim 3. Finally, Applicants request that the rejection of claims 4-5, 7, 8, 10-13, 15, 16, 20-22, and 24-26 be withdrawn as depending from claims 3, 11, or 19.

In addition, it is apparent that Applicants and the Examiner are at variance with respect to interpretations of what *Wyman* fairly teaches. Applicants respectfully requests a teleconference to work through the specific teachings of *Wyman* in this respect. To this end, the undersigned may be reached at 770-933-9500, ext. 281.

CONCLUSION

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding this response, the Examiner is encouraged to telephone the undersigned counsel of Applicants.

Respectfully submitted,

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